

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 01-455-A
)	
ZACARIAS MOUSSAOUI)	

REPLY TO GOVERNMENT'S SUBMISSION
REGARDING RELEVANCE OF COCKPIT VOICE RECORDERS

COME NOW Frank W. Dunham, Jr., Edward B. MacMahon, Jr., Gerald T. Zerkin, Alan Yamamoto and Judy Clarke, as standby counsel to Zacarias Moussaoui, provide the following Reply to the Government's Submission Regarding Relevance of Cockpit Voice Submissions, state as follows:

Nothing in the government's response to this Court's order requiring the government to explain the relevance of the cockpit voice recorder of Flight 93 provides the Court with any reason to determine, at this time, that the recorders are relevant to any issue in this case. Instead, the government has taken the Court's order as an opportunity to release inflammatory and obviously circumstantial evidence to the public which purports to link Mr. Moussaoui with the alleged hijacker Ziad Jarrah.

In its Submission, the government states that Jarrah's role as a hijacker on Flight 93 is important to the government's evidence linking defendant to the conspiracy because a telephone number that defendant called during the conspiracy was scrawled on a business card belonging to Jarrah, which was found at the crash site in Pennsylvania." Government's Submission at pp. 6-7.

This “link” was picked up by the media and was the source for many prejudicial headlines about the defendant, *e.g.*, Tom Jackman, *U.S. Says Card Links Moussaoui, Hijacker*, THE WASHINGTON POST at A-1, September 25, 2002.

This Court should not accept the Government’s claim of a “link” at face value if it determines that this allegation is material to the determination of the instant motion. The government does not identify the business card, how it has determined that a card found at the Pennsylvania crash site belonged to Jarrah to the exclusion of others, has not identified the phone number or when Mr. Moussaoui allegedly dialed the same number. Since the conspiracy alleged in the Indictment begins in 1989, some idea as to when this call was made and to whom is necessary to determine whether this evidence actually links Mr. Moussaoui to Mr. Jarrah or any other co-conspirator.

For example, the Indictment recites many efforts by Mr. Moussaoui to solicit flight training in the United States. (Indictment, ¶ 32). The Indictment is replete with references to efforts by others to obtain flight training in the United States. Given these allegations, there would be no probative value, and thus no “link,” if Mr. Moussaoui once called the same flight school that Jarrah did. While in a circumstantial case the government may need to stretch the boundaries of reasonable inference, this thin reed allegedly linking Mr. Moussaoui to Jarrah is so speculative and unsupported by the record that the Court cannot base its ruling on the cockpit voice recorder on such an incomplete or flimsy, but certainly inflammatory, proffer. If there is more to this, let’s see it.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Reply to Government's Submission Regarding Relevance of Cockpit Voice Recorders was served upon AUSA Robert A. Spencer, AUSA, David Novak, and AUSA Kenneth Karas, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, VA 22314, via facsimile and by placing a copy BY HAND in the box designated for the United States Attorney's Office in the Clerk's Office of the U.S. District Court for the Eastern District of Virginia and via first class mail to Zacarias Moussaoui, c/o Alexandria Detention Center, 2001 Mill Road, Alexandria, VA 22314 this 25th day of September 2002.

/S/

Frank W. Dunham, Jr.